S.B. Civil Writ Petition NO.2888/2005

Smt. Nanudi

vs

Smt. Deepika & Ors.

DATE OF ORDER : - 17.5.2005.

HON'BLE MR. PRAKASH TATIA,J.

Mr.Vijay Bishnoi, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 25.4.2005 by which the petitioner's one application filed under Order 7 Rule 11 CPC was dismissed by the trial court.

According to learned counsel for the petitioner, the court below went totally wrong when court below held that the contention raised by the petitioner can be examined after the trial of the election petition whereas in fact, in view of the judgment of this Court in S.B.Civil Writ Petition NO.892/2002-Chetan Das Vs. The District Judge, Bhilwara & Ors decided on 20th April, 2005 (by me), this Court held that the election petition can be dismissed at initial stage and the court can reject the election petition without there being any reply of the returned

candidate. So far as according to learned counsel for the petitioner, the allegations levelled in the election petition are so vague, which clearly reveals that the election petitioner wants to have a fishery enquiry in the matter. It is also submitted that in view of the judgment delivered in the case of Hari Shankar Jain Vs. Sonia Gandhi reported in (2001) 8 SCC 233, the specific allegation must be there and mere complying with the legal formality of mentioning the legal terms is not sufficient. One should lay down factual foundation in the petition upon which court can proceed with the trial.

I considered the submissions of learned counsel for the petitioner. It may be observed at the outset that for deciding the objections covered under Order 7 Rule 11 CPC, the court can examine the matter without there being written statement or reply of the other party and the objection can be raised by filing an application. The court normally may not insist for filing the written statement or reply by the contesting party when there is objections under Order 7 Rule 11 CPC. In appropriate case the court can dismiss the suit or election petition as the case may be on finding that the grounds as mentioned in the application filed under Order 7 Rule 11 CPC exist for rejection of the plaint or the election petition.

I examined the copy of the plaint and the objection raised by the

petitioner in the application filed under Order 7 Rule 11 CPC. There are several allegations for challenging the election of the petitioner and after going through all these allegations, this Court is of the view that all the allegations are not so vague so as to call for interference by this Court to set aside the order of the trial court and reject the election petition of the petitioner without an enquiry on the allegations.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-